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OFFICE OF THE SECRETARY

October 16, 2000

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Federal Communications Commission
445 - 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Ex Parte Correspondence

Re: REPORTS OF NORTHPOINT SPECTRUM GIVEAWAY

ET Docket Number 98-206

Dear Chairman Kennard:

In light of alarming reports in the media, we are writing on behalf of our client, the National Rural Telecommunications Cooperative ("NRTC"), to express once again our serious concerns regarding the above referenced rulemaking proceeding ("Rulemaking") and associated applications by Northpoint Communications. Although NRTC is concerned – as I am sure you are – that anonymous "FCC sources" are reportedly sharing confidential information with the media and other interested parties in this highly contentious proceeding, it is the content of the articles themselves that we find most troubling.

No. of Copies rec'd 0+2
List A B C D E

The Multichannel News and SkyReport Articles

On October 9, 2000, SkyReport E-News and Multichannel News both released articles regarding the Commission's processing of the Northpoint applications.¹ Specifically, the Multichannel News article states that the Commission is "planning to give the green light for Northpoint Technology Ltd. to share direct-broadcast satellite spectrum, according to FCC and legal sources."² What is particularly unsettling is that both articles suggest that the Commission may issue licenses to Northpoint without accepting competing applications and without holding a spectrum auction.³

These types of reports, especially when one considers their apparent FCC source, cannot be taken lightly. NRTC is well aware that they could simply be attributed to nothing more than idle conjecture on the part of certain journalists. However, such off-hand attribution to Commission sources is difficult to accept when the underlying theme throughout this entire proceeding – favorable Commission treatment towards Northpoint, and a complete disregard for standard applications processing procedures – has been a continuous cause for concern to many participants. The Commission's apparent partiality towards Northpoint has been the source of countless filings and *ex parte* proceedings with the Commission by numerous parties, including NRTC.

The Commission Should Open a Filing Window, Accept Competing Applications and Hold an Auction.

NRTC's *ex parte* filing of September 21, 2000, addressed many of these issues in detail.⁴ Specifically, NRTC pointed out that if the Commission determines that DBS and terrestrial users can share this band, it should not authorize Northpoint or any other entity to provide services without first providing all entities with a full, fair and open opportunity to submit competing applications. By establishing an unambiguous Filing Window, accepting competing applications and conducting an auction, the Commission will ensure that all applicants have an opportunity to participate in and pay for the use of this valuable spectrum.

Northpoint claims that it is somehow entitled to this spectrum because it filed a terrestrial application during an NGSO Filing Window. Northpoint's posturing on this issue has generated significant anxiety within the telecommunications industry since the Commission has ostensibly supported Northpoint's allegation by remaining silent. The apparent release of information to select members of the media by faceless Commission

¹ A copy of both these reports have been attached for review.

² See Hearn, Ted, Multichannel Online, *Northpoint Looks Good to Go at FCC*, October 9, 2000.

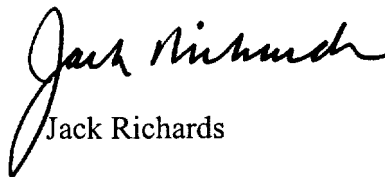
³ See SkyREPORT.COM E-News, *Northpoint Plan Inches Along*, October 9, 2000 (inquiring as to how the Commission could justify giving the spectrum to the politically connected Northpoint without an auction); See Also, Hearn, Ted, Multichannel Online, *Northpoint Looks Good to Go at FCC*, October 9, 2000 (suggesting that the FCC is still "up in the air" about whether to conduct an auction).

⁴ NRTC *ex parte* filing, ET Docket Number 98-206, filed September 21, 2000.

"sources" only reinforces the view that this entire matter is being handled in a highly partial and predetermined manner.

NRTC urges the Commission to remain focused on FCC precedent and to keep in mind the importance of the issues raised in this proceeding. For this reason, NRTC urges the Commission to refrain from granting regular licenses to Northpoint or any other entity to provide terrestrial services in the DBS band without first providing all parties with a full, fair and open opportunity to submit competing applications. By establishing an unambiguous Filing Window, accepting competing applications and conducting an auction, the Commission will ensure that all applicants have an opportunity to participate in and pay for the use of this valuable spectrum if indeed it can be shared by terrestrial and satellite users. In that manner, the Commission will best promote the utilization and development of these frequencies while preserving the integrity of and public confidence in its processes.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Richards", written in a cursive style.

Jack Richards

cc: Commissioner Harold W. Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani

Attachment: Certificate of Service

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Northpoint Looks Good to Go at FCC

By TED HEARN October 9, 2000

Washington -- In a controversial step, the Federal Communications Commission is planning to give the green light for Northpoint Technology Ltd. to share direct-broadcast satellite spectrum, according to FCC and legal sources.

The FCC is expected to make a preliminary move on the Northpoint petition before Nov. 29, but whether the FCC would issue the company the necessary licenses by then was still up in the air last week.

"Generally, that is what we understand. I am hearing that's the general situation," said a Washington lawyer who has tracked the Northpoint issue closely.

Northpoint's business plan calls for terrestrial distribution of high-speed data, dozens of cable networks and every local broadcast-TV signal using low-cost transmitters. The company has aggressively lobbied the FCC to gain access to the DBS spectrum at no cost.

The DBS industry is up in arms about Northpoint and still may persuade Congress to override any FCC decision until the agency has hired a third party to test Northpoint's service for compatibility with DBS frequencies.

DBS industry leaders have protested loudly that Northpoint's service will interfere with millions of home dish owners' reception as hopes of robust DBS-cable competition are starting to be realized.

"We obviously will not be pleased if the FCC decides they want to develop a sharing concept," said Andy Paul, senior vice president of the Satellite Broadcasting & Communications Association. "We are not going to be happy about that because the whole issue is interference, it's not competition."

DBS analyst Mickey Alpert, president of Alpert &

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DBS energy money report, president of report & Associates here, said he would be troubled if Northpoint's service interfered with DBS signals.

"If that happens, the FCC has made a terrible mistake," Alpert said. "That is not a small thing. It's a major thing."

If Northpoint does not interfere, he said, he does not expect the company to siphon off many of the DBS industry's 12 million customers.

"Assuming there is no interference, I think they will be an annoyance. I think DBS will be able to compete with them," he said.

Northpoint insists independent studies have shown that interference would not occur, because its transmitters would beam signals from the opposite direction of DBS transmissions.

According to FCC and legal sources, agency engineers have concluded that Northpoint can share DBS spectrum without degrading existing satellite service.

Under one scenario, the FCC would release an order stating that the DBS spectrum can be shared but would not issue Northpoint any licenses.

At the same time, the agency would release a second order to seek public comment on a range of technical issues associated with sharing, perhaps including a proposal to auction off the spectrum if companies other than Northpoint opt to seek it.

In May, Pegasus Communications Corp. filed with the FCC to use the same spectrum sought by Northpoint.

Under a law passed last year, the FCC is required to deal with the Northpoint issue by Nov. 29, but some agency staffers apparently believe the measure does not require the FCC to issue any licenses by that time.

It was possible the FCC could wrap everything up by Nov. 29, one source said, while another insisted that issues in the further notice would take months to resolve.

NEXT▶





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DirecTV Launch Set for First Quarter
Boeing Gets Hughes Satellite Assets
Northpoint Plan Inches Along
SkyBOX: As the Bull(frog) Roars
PEOPLE: XM Makes Appointments

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- - - DirecTV Launch Set for First Quarter - - -

DirecTV 5, the next satellite to be launched for
the DBS service, won't take its trip into space
until the first quarter of next year.

It was expected that the high-power bird,
inherited by DirecTV during its acquisition of
PrimeStar, would launch by the end of the year.
Several online launch schedules had the satellite
taking off this month, specifically Oct. 26.

DirecTV spokesman Bob Marsocci said the revised
schedule will allow for additional testing and
rework aboard the satellite.

The Space Systems/Loral-built satellite,
originally titled TEMPO-1 before it was renamed
by DirecTV, will travel aboard a Lockheed Martin
Atlas 2AS from launch pad 36B at Cape Canaveral
in Florida.

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- - - Boeing Gets Hughes Satellite Assets - - -

On Friday, Boeing completed its \$3.75 billion purchase of Hughes Electronics' satellite manufacturing business.

The new assets, once known as Hughes Space and Communications, could help Boeing's space-based revenues grow to nearly \$10 billion a year. The move also will allow Hughes to focus on its service business, including DirecTV. DirecTV and Hughes have been considered acquisition targets, and the Boeing sale could help carve out deal for the companies.

Boeing renamed the 9,000-employee California unit Boeing Satellite Systems. In addition to the Hughes buy, Boeing wrapped up its \$1.5 billion purchase of Jeppesen Sanderson, acquiring a wealth of flight data information.

***** Hughes Network Systems *****

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- - - Northpoint Plan Inches Along - - -

In a controversial move coming before the changing of the guard at the White House, the Federal Communications Commission appears ready to give Northpoint the OK to use DBS spectrum for a terrestrial service, something expected (and reported, including here) throughout the industry.

The latest comes from Multichannel News which claims that the FCC will sign off on the Northpoint proposal in late November. However, Multichannel News reported that the FCC will issue only a preliminary OK, and it's not clear whether the FCC would approve the

necessary licenses for Northpoint's plan within two months. Nor is it clear how the agency could justify giving the spectrum to the politically connected Northpoint without a spectrum auction including other would-be users.

Northpoint's proposal to share DBS spectrum has raised the ire of DBS interests concerned about interference to satellite signals caused by the company's terrestrial offering. They have also raised red flags regarding Northpoint's political clout in the beltway and its tactics in dealing with federal agencies and regulators.

- - - SkyBOX: As the Bull(frog) Roars - - -

When the National Association of Broadcasters roars, politicians inside the Beltway quake. After all this is the guardian of communications to the folks back home, dispenser of millions in campaign contributions and PR bulldozer nonpareil. Indeed, the NAB, personified by the pin-suited personage of Eddie O. Fritts, has been a mighty bull. But a hard look at today's entertainment industry suggests that, before long, the bull could metamorphize into a (bull)frog. A frog, so to speak, full of bull.

Evidence of the NAB's impending croak leaks through that organization's vociferous, sometimes vituperative, insistence on must-carry rights for even the least-watched of the local stations plus its demand that the near-half-century old Grade B standards be applied to 21st century television viewers. Why does such a powerful organization cling to such antiquated, often nonsensical, rules? Quite simply because the NAB knows that its future may depend on forcing an increasingly weak set of local channels down the throats of TV viewers.

Consider this two-part equation:

Today more than ever, the NAB depends on local channels for its existence. Two of the big four television networks - Fox and NBC - have already withdrawn their support from the broadcasters' association ... and some suggest that a third member of the big four may be soon to follow. (You think Mel likes to pay those dues?) Many of the local broadcasters who fund the Association's enormous budget, in turn, depend on network programming for their economic wellbeing. But that network programming could, and very well may, go elsewhere.

Sacrilege, you say? Nope. Simple economics. For

the last several years, the big four networks have watched their ratings plummet as alternative programming sources - the HBOs, MTVs, USAs and Discoverys - have siphoned off viewers. Thanks to rising advertising dollars, the big four have held ground on their balance sheets. But as one friend of ours in the broadcasting biz recently noted, "We know we're standing on air."

So what to do? The smart networks are taking a close look at what they have to sell ... that is, programming ... and where they can sell it. Suppose, just suppose, that one of the big nets decided to sell its programming not to the local broadcaster in Central City, USA, but to the local cable operator. Would that cable operator pay top dollar, plus some, for the programming?

Pushed by competition from DBS, and possibly an overbuilder or two, you bet he or she would. And where would that leave the local broadcaster? In the arms of Eddie O. Fritts who, not surprisingly, wants to insure that TV viewers in 2001 and beyond remain tethered to the folks who support the NAB.

Do you have a comment or letter for SkyBOX?
Write the editors at: editor@skyreport.com.

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- - - PEOPLE: XM Makes Appointments - - -

*XM Makes Appointments - XM Satellite Radio hired ABC Radio Networks executive Steve Harris as vice president, external programming. He will supervise content provided by XM's programming partners, including BBC, BET, CNN/Sports Illustrated, Bloomberg, C-SPAN Radio and others. XM also hired additional talent for its programming efforts. Bill Evans, Martin Goldsmith, Bubba Jackson, Wayne Jobson, Kane, Ray Knight, Phlash Phelps, Steve Stiles, Scott Struber, Bill Wax and Cleveland Wheeler have joined the company as program and music directors.

*Murdoch Son Deputy COO - Lachlan Murdoch, the son

of media tycoon Rupert Murdoch, was appointed deputy chief operating officer of News Corp., the third most senior position in his father Rupert's global empire. Press reports described his new position as a "COO in training." Lachlan has overseen Australian newspapers and other media outlets in the country owned by News Corp.

*Garvey VH1's Director of Music - Michael J. Garvey was promoted director of music programming for VH1. In his new position, Garvey will be responsible for programming all the network's acquired music videos on a weekly basis.

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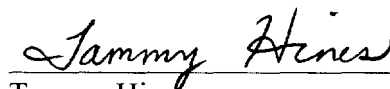
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